ment is that s 3(4) of the Residential Property Act (and also s 3(10), I may add), by providing for the compulsory sale of the property and the payment of the proceeds thereof to the foreign person, creates a trust for sale. Under s 3(1)(b), a trust for sale of any residential property in favour of a foreign person is unlawful. Therefore, the devise to the widow was unlawful.

In my view, neither argument is valid. Section 19 of the Wills Act does not lay down the conditions which make a devise unlawful or contrary to law. It merely provides for the consequences of a devise which fails or is void for any of the reasons stated therein. Accordingly, s 19 is irrelevant for the purpose of determining the legal effect of the provisions of s 3 on a devise of residential property to a foreign person.

Section 3(3) of the Residential Property Act does not make it unlawful for any testator to devise residential property to a foreign person. What it does is to make it legally impossible to make such a devise by providing that no estate or interest in any residential property shall pass by bequest, succession or inheritance to any foreign person. A devise of residential property to a foreign person cannot take effect as a devise. It fails as a devise of real property but it does not fail altogether because subss 4 and 10 of s 3 provide that the property shall be sold and proceeds thereof be paid to the devisee. Counsel for the estate of Wong Shee Fun is correct in submitting that a devise of a residential property to a foreign person takes effect as a trust for sale under the Residential Property Act.

This conclusion must also undermine completely the argument that such a trust for sale is unlawful by reason of s 3(1)(b). It would make no sense for the legislature to create a trust for sale merely to declare it unlawful. The argument is plainly wrong because sub-s (1)(b) and (4) of s 3 refer and therefore apply to trusts for sale of residential property in favour of foreign persons created inter vivos or by testamentary disposition. That this is the correct construction is reinforced by the qualifying words in s 3(1) of the RPA 'except as provided in the Act'. Section 3(4) is an exception, if it is necessary to rely on this qualification.

Accordingly, I declare that the net proceeds of sale of the property belong also to the estate of Lee Yoke Lan absolutely.

*Order accordingly.*

Solicitors: *Leong & Gay*; *Allen & Gledhill.*

Reported by *Ng Sheau Jiuan*

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## Prem Singh & Ors v Kirpal Singh

HIGH COURT (SINGAPORE) – ORIGINATING SUMMONS NO 603 OF 1988
CHAO HICK TIN JC
21 FEBRUARY 1989

*Mental Disorders and Treatment – Inquiry to determine whether patient is of unsound mind – Application for – Patient suffering from schizophrenia – Psychiatrists' reports differed on whether patient mentally capable of managing herself and her affairs – Discretion of court in granting inquiry – Principles of – Merits of case – Mental Disorders and Treatment Act (Cap 178, 1985 Ed), s 3(1)*

This is an application by the applicants under s 3 of the Mental Disorders and Treatment Act (Cap 178, 1985 Ed) ('the Act') for an order directing an inquiry to determine whether the subject person, Mdm K ('the patient'), who is also the wife of the respondent, is or is not of unsound mind and incapable of managing herself and her affairs. The applicants are three of the children of the patient and are locked in family conflict with the respondent and five other children.

The applicants say that the respondent assaulted the patient from the sixties until the mid-seventies and because of the alleged abuse, the patient suffered mental anguish which led to schizophrenia. The patient was treated by several psychiatrists. There was divided opinion on the part of the psychiatrists as to whether the patient is mentally capable of managing herself and her affairs.

**Held,** disallowing the application:

(1) Section 3(1) of the Act clearly gives a discretion to the court to determine whether in a particular case where a person is alleged to be mentally disordered, an inquiry should be ordered. It does not follow that an inquiry must be ordered in every case where it is shown that the person is of unsound mind and incapable of managing herself and her affairs.

(2) In the present case, there is no allegation that there has been any physical assaults committed by the respondent on the patient since the mid-seventies. The patient is now being cared for and seems reasonably well settled with the respondent and her other children and there is no useful purpose in having an inquiry. In so far as her property is concerned, there is no evidence that she has anything more than the two POSB accounts and nothing has been shown that these two accounts require any special attention. Bearing in mind the object of such an inquiry and particularly the comments of Dr N, a psychiatrist, in his report that 'it is neither necessary nor desirable to put her through an inquiry, as this may subject her to unwanted stress which may cause a flare-up in her symptoms', the court is of the view that the holding of an inquiry at this time would not advance the interest of the patient nor would it be to her benefit.

(3) The court's jurisdiction under the Mental Disorders and Treatment Act should only be exercised for the benefit of a mentally disordered person. It ought not to sanction a course of procedure which is likely to lead to further distress to the patient on account of the bitter dispute between the respondent and some of his children.

**Cases referred to**

1 *Ex parte Tomlinson, Broadhurst* (1812) 1 V & B 57; 35 ER 22 (refd)
2 *Re Claire* (1846) 3 Jo & LAT 571 (refd)
3 *Re Cathcart* [1892] 1 Ch 549 (refd)

**Legislation referred to**
Mental Disorders and Treatment Act (Cap 178, 1985 Ed) s 3

*Hassan Almenoar* for the applicants.
*Davinder Singh* (*Muthu Arusu* with him) for the respondent.
*Michael Khoo* for the intervener/patient.

*Cur Adv Vult*

**Chao Hick Tin JC:** This is an application under s 3 of the Mental Disorders and Treatment Act (Cap 178, 1985 Ed) for an order directing an inquiry for the purposes of determining whether the subject person, Mdm Kishen Kaur (hereinafter called 'the patient') who is also the wife of the respondent, is or is not of unsound mind and incapable of managing herself and her affairs.

This application is initiated by three of the children of the patient and is opposed by the respondent and five other children of hers. Pursuant to an application by summons-in-chambers, I granted an order giving liberty to the patient to intervene by her solicitors. Let me first set out some pertinent background.

There is no doubt a deep division within the respondent's family, with the three applicants on the one side and the respondent and the other five children on the other. The conflict appears to exist in 1974, if not earlier. The animosity between the two sides is so intense that on 16 June 1988 the first and second applicants placed a notice in *The Straits Times* renouncing the respondent as their father.

While it is not entirely clear why the dispute came to a head in 1985, it seems to concern the mother who, the applicants alleged, has been mistreated by the respondent. The applicants say that the respondent assaulted and abused their mother from the sixties until the mid-seventies because of the respondent's allegedly illicit relationship with another woman. Because of the alleged abuse the mother suffered mental anguish which led to schizophrenia.

It is not disputed that the patient was brought by Mr Harbajan Singh, a son, to see Dr Paul Ngui, a consultant psychiatrist, on 25 August 1973. Dr Ngui was told that the patient was not mentally well in the previous four years; she was withdrawn, complained of being persecuted and behaved abnormally like talking to herself and laughing or smiling without apparent reason. She was seen by Dr Ngui irregularly until 1976 when she failed to turn up. She was diagnosed as suffering from schizophrenia and treated with neuroleptic drugs. In those few years, because of the irregularity in follow-up and default in treatment, it would appear that the patient made very little progress and did not improve in her mental state.

After a lapse of nine years, the patient was, on 9 September 1985, brought by the first and second applicants to see Dr Ngui for a psychiatric review. He was of the opinion that the patient's mental state had become worse since he last saw her in 1976 and there was a definite deterioration in her personality. Dr Ngui's detailed opinion is set out in his report dated 19 September 1985.

During that month of September 1985, there were numerous incidents between the parties so much so that the police had to be brought in. This led to an agreement (hereinafter called 'the first agreement') reached between the parties, which was recorded in a police report made on 21 September 1985. In accordance therewith the respondent agreed:

(a) to be responsible for psychiatric care and expenses for Kishen Kaur and to ensure attendances regularly. The parties agree to see Dr Nagulendran;
(b) to continue Kishen Kaur's attendance on Dr Ong Swee Law and to be responsible for expenses hitherto;
(c) to employ and be responsible for expenses of a full-time Filipino maid;
(d) to contribute a minimum sum of $1,000 per month. The sum to be banked into the savings account of Kishen Kaur. Harbajan Singh and Sarjit Kaur to be joint signatories of the account. That Sarjit and Harmohan agree to provide for Kishen Kaur but will not stipulate minimum sum;
(e) to allow all family members (the children) and in-laws complete access to Kishen Kaur. To allow them to take her on outings and to allow them to have Kishen Kaur to stay with them sometimes; and
(f) that 38E Jervois Road will not be given or willed away to a person who is not a member of the family. 'Family' for this particular purpose is defined as including only Harbajan Singh, Harmohan Singh, Diljit Singh, Manjit Singh, Jasbir Kaur and Kishen Kaur (mother).

Following this agreement, the patient was brought to see Dr Nagulendran, a consultant psychiatrist, in October 1985. She has since attended Dr Nagulendran regularly, initially on a fortnightly basis and subsequently on a monthly basis.

However, this agreement did not end the dispute between the two sides. Allegations were made by the applicants that notwithstanding the fact that the respondent agreed to allow all family members complete access to the patient, the respondent did not keep his promise and began to impose restrictions on their access. This and other matters led to further conflicts between the two sides culminating in numerous legal proceedings being instituted in court.

Through the intervention of intermediaries, a deed was entered into on 15 April 1988 by the respondent of the first part, Prem Singh of the second part and seven other children (Harbajan Singh, Harcharan Singh, Diljit Anthony Singh, Manjit Singh, Sarjit Kaur, Jasbir Kaur and Harmohan Singh) of the third part whereby the parties agreed to withdraw all writs/complaints/summonses filed against the other parties within two weeks of

the execution of the deed. Among the other terms of the agreement are:

(i) respondent should arrange a meeting within two weeks for Dr Nagulendran to meet with the children 'for a discussion of the state of mental health and the treatment being given to Kishen Kaur';
(ii) respondent would supply to all parties copies of the reports received from Dr Nagulendran on the condition and treatment of Kishen Kaur;
(iii) respondent would ensure that Kishen Kaur would continue to receive psychiatric treatment and general medical attention as and when she might require;
(iv) respondent agreed that all the children would have free access to their mother between the hours of 9 am to 9 pm daily.

The agreement embodied in the deed proved to be short-lived. Barely two months later, the present originating summons was instituted by the applicants on the ground that the respondent has failed to fulfil his obligations set out in the deed.

From the evidence before me, it is quite clear that the patient has been suffering from schizophrenia for many years now. Dr Paul Ngui, who first saw Kishen Kaur in 1973 and then intermittently until 1976, last saw her in September 1985. His opinion is to that extent dated. Dr Ngui has not been able to furnish an up to date report because, according to the applicants, the respondent has prevented them from bringing the patient to be seen by Dr Ngui. Dr Ngui in his letter dated 16 August 1988 said that when he saw her in 1985 'her mental state had become worse (than) I last saw her in 1976 and there was a definite deterioration in her personality'. He opined that 'given her mental status on 9 and 16 September 1985, she could not have functioned independently and would not have been able to manage herself and her affairs for some period of time'.

Dr Nagulendran came into the picture pursuant to the first agreement. In his affidavit filed herein on 16 August 1988, Dr Nagulendran said he diagnosed the patient as suffering from a condition of schizophrenia. It is at present of the residual type. He said she 'does not exhibit any overt symptoms of psychotic disorder such as delusions, hallucinations, paranoia or irrational behaviour. The symptoms she exhibits are what are called negative symptoms of schizophrenia ... namely, a lack of spontaneity and a somewhat withdrawn personality.' In his interview with her she was able to understand questions put to her which she responded. However, her replies were short.

In conclusion, Dr Nagulendran said that in his view 'it would be better, by reason of considerations for her welfare and her wishes, not to change her present environment, especially if, as reported, she is in fact performing the tasks she is doing'. He also expressed the view that 'it is neither necessary nor desirable to put her through an inquiry as this may subject her to unwanted stress which may cause a flare-up in her symptoms'.

Dr Ong Swee Law, at whose clinic the patient has been attending for general medical treatment in the last 30 years, confirmed in his affidavit that she is in good physical health for a person of her age though she is overweight. Dr Ong also said that she has never shown signs of neglect or complained of neglect.

After the initial hearing of this originating summons, the patient was examined by another psychiatrist, Dr Fong Yeng Hoi, on 12 October 1988. Dr Fong, in his medical report dated 10 October 1988, said that 'she is suffering from schizophrenia which has reached the state where there are no longer any florid psychotic symptoms. Instead her current symptom comprises a residual quiescent state of just negative symptoms. She has become withdrawn into herself and her own preoccupation and interacts to a lesser extent with friends, relatives, and her immediate environment.' Dr Fong, who also made a home visit, reported that 'as far as can be seen, she is functioning reasonably well at home by herself and with the support provided by the children at home. I noted that on some occasions during my visit she was able to exercise a bit of her matriarchal authority and pointed out things which the others missed.' Dr Fong concluded that 'under the present circumstances of her home environment, she is coping adequately. The medication that Dr Nagulendran is maintaining her on presently will help to stabilize her mental state and reduce any risk of relapse.'

The patient has also been examined by Prof Seah Cheng Siang, senior physician, Singapore General Hospital, who referred her to Dr Teo Seng Hock, the medical director of the Woodbridge Hospital, for an assessment of her mental state. Dr Teo, in his medical report dated 7 November 1988 to Prof Seah, stated, inter alia, the following:

> ... she was mentally alert and was able to give details about her personal particulars. She was relevant in her talk content. She was initially a little slow in replies but when a familiar figure, her elder son, was asked to be with her, she spoke more spontaneously.
>
> My examination did not reveal any evidence of hallucination or delusion. Her mood state was normal and her affective response was appropriate. Her cognitive functions (ie memory orientation, concentration and attention) were satisfactory for her age. She knew how much money she has and also what she intends to do with it. There was no defect in her ability to make sensible decisions and judgement.
>
> My conclusion is that she is in remission of her schizophrenia for which she is being treated by Dr Nagulendran. I am of the opinion that she is mentally capable of managing herself and her affairs.

Mr Hassan Almenoar, in his submission to me, made the point that not all the previous medical reports on the patient were placed before Dr Teo particularly those of Dr Paul Ngui. But it seems to me that in a matter of this kind, while the background may be relevant, it is the clinical examination by Dr Teo which is most relevant and important. Even assuming I accept the opinion expressed by Dr Paul Ngui that the patient would not be likely to be able to manage herself and her affairs, that does not necessarily mean I ought to grant an inquiry.

Section 3(1) of the Mental Disorders and Treatment Act clearly gives a discretion to the court to determine whether in a particular case where a person is alleged to be mentally disordered, an inquiry should be ordered. The English equivalent on this subject is set out in the Lunacy Act. It does not follow that an inquiry must be ordered in every case where it is shown that the person is of unsound mind and incapable of managing herself and her affairs. In *Ex parte Tomlinson, Broadhurst*,[1] Eldon LC ruled that he was not bound to issue a commission of lunacy whenever the fact of lunacy is established. He went on to say:

> ... as the object of such a proceeding being the welfare of the party, I know, that by granting it in many cases, I might forever prevent the cure ...
>
> The true point upon this application for me to consider in the exercise of this most delicate and important authority, committed to me, is, whether it is really necessary for the benefit of the lunatic with reference to his mental health and his property that a commission should issue ...

In *Re Claire*,[2] the petition which was presented by the son-in-law of Mr Claire, the alleged lunatic, was opposed by Mrs Claire, with whom he was residing, on the ground that, though of unsound mind, he was not in need of protection of the court either for himself or his property. The Lord Chancellor declared that the jurisdiction was for the purpose of giving protection to the party alleged to be a lunatic. Having reviewed the evidence and concluded that the lunatic would not require any further protection than that which he already possessed in the care and attention of his wife and family, the Lord Chancellor refused to issue the commission.

The principles governing the manner in which the court should exercise its discretion were further elucidated by Lindley LJ (no doubt obiter) in *Re Cathcart*[3] and I need only quote the following passage at pp 559-60:

> (i) It is obvious that no proceedings in lunacy can be justifiably taken against anyone who is not reasonably supposed to be of unsound mind ...
>
> (ii) If insanity is believed to exist, still proceedings by inquisition ought not to be had recourse to unless the supposed lunatic has shewn himself to be incapable of managing himself and his affairs ... Unless a person's insanity is so marked and of such a nature that he is not able to manage himself and his affairs, he ought not to be found lunatic; and, unless there is considerable evidence of his inability, no inquiry ought to be set on foot ...
>
> (iii) Assuming that there are grounds for supposing a person to be insane and to be incapable of managing himself or his affairs, it does not follow that there is any occasion to institute proceedings by inquisition against him. It is necessary to consider his position, and what management is wanted in his particular case, and whether his friends and relatives are bestowing such care and management as are required. A person who is insane, but who is living at home and is carefully and judiciously looked after, may well be left alone: while an insane person in a different position, even if harmless to himself and others, may require protection which can only be afforded through the medium of an inquiry ...

I have reviewed the facts of the present case. There is no allegation that there has been any physical assaults committed by the respondent on the patient since the mid-seventies. The allegation of assaults would appear to relate mainly to the period in the sixties. Since October 1985, the patient has been seen regularly by Dr Nagulendran who has been prescribing maintenance medication for her illness. It must be noted that the appointment of Dr Nagulendran as psychiatrist to the patient was pursuant to the first agreement between the two sides and this agreement was further affirmed in the deed of 15 April 1988. It is not challenged that Dr Nagulendran has been attending to her on a regular basis. She has also been seen by other doctors. It may be, as contended by the applicants, that this arrangement was brought about because of the efforts of the applicants in forcing the respondent to ensure that the patient is given proper medical treatment. Nevertheless, the point is that since October 1985 she has been getting proper medical care.

In this regard, I have borne in mind the opinion of Dr Teo Seng Hock. His report indicates that while the patient is suffering from schizophrenia, she is nevertheless able to manage herself and her affairs. Even if the opinion given by Dr Teo is not absolutely correct and that another psychiatrist, say, Dr Paul Ngui, could, on examination of the patient, have given a different opinion, that does not detract from the fact that she is now being cared for and seems reasonably well settled with the respondent and her other children, two of whom are also advocates and solicitors like two of the applicants.

As I have stated in the beginning, it seems to me the conflict in the family is somewhat deep-rooted. What was the cause of the early turmoil is not known but I have the distinct feeling that the mother, Kishen Kaur, is slowly becoming a pawn in the conflict. She appears reasonably settled in her home and I do not see any useful purpose in having an inquiry. She has a house help to assist her in her domestic duties. In so far as her property is concerned, there is no evidence that she has anything more

than the two POSB accounts. Nothing has been shown that these two accounts require any special attention. Bearing in mind the object of such an inquiry and particularly the comments of Dr Nagulendran that 'it is neither necessary nor desirable to put her through an inquiry, as this may subject her to unwanted stress which may cause a flare-up in her symptoms', I am of the view that the holding of an inquiry at this time would not advance the interest of the patient nor would it be to her benefit.

The court's jurisdiction under the Mental Disorders and Treatment Act should only be exercised for the benefit of a mentally disordered person. I do not think this court ought to sanction a course of procedure which is likely to lead to further distress to the patient on account of the bitter dispute between the respondent and some of his children.

Finally, I ought to mention the following for the record. At the conclusion of the initial hearing in chambers of this originating summons, I granted an order for an inquiry. Pursuant to a written request by the respondent, I agreed to hear further arguments. In the light of the further submissions made to me and the additional facts placed before me, I am now of the opinion, for the reasons given above, that an inquiry should not be ordered.

As regards costs, I think no order as to costs is appropriate in all the circumstances. While I felt that the mother is slowly becoming a pawn in the conflict between the applicants and the respondent, I do not think I can say that the applicants did not also have their mother's interest at heart when they made this application.

*Application disallowed.*

Solicitors: *Almenoar Khoo & Partners*; *Drew & Napier*; *Michael Khoo & BB Ong*.

Reported by *Ng Sheau Jiuan*

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# United Malayan Banking Corporation v Goodhope Realty & Ors

HIGH COURT (SINGAPORE) – ORIGINATING SUMMONS NO 1130 OF 1986
THEAN J
16 FEBRUARY 1989

*Land Law – Torrens system – Lease of part of building – Tenant paid deposit as security for due performance of lease – Whether equitable lien arose for the return of the deposit – Tenant holding over – Whether periodic tenancy binding on mortgagees created – Land Titles Act (Cap 276, 1985 Ed), ss 39, 64, 104 and 108(1) – Conveyancing and Law of Property Act (Cap 61, 1985 Ed), s 29*

The tenant (the plaintiffs) had leased part of a building from the owner (the first defendants) for ten years. The lease was not registered. The title to the building was issued under the Land Titles Act. The tenant paid $6m to the owner by way of security or deposit for the due performance of the lease agreement. The deposit was refundable to the tenant on the expiry of the lease. The owner later mortgaged the entire building to two banks (the second and third defendants) to secure a loan from the banks by company ICIL. The mortgage was then registered. When the owner defaulted on its obligations to the two banks, a receiver of the income from the entire building was appointed under the mortgage. The tenant then lodged a caveat to protect their interest under the lease. They also paid the rents and service charges due, to the receiver. The tenant later lodged another caveat seeking to protect what they called an equitable lien on the building. When the lease expired, the tenant continued in possession of their part of the building and continued paying rent to the receiver. Later, the tenant vacated the building. The tenant later received a letter from the Registrar of Titles stating that a transfer between the second bank and DBS, another bank, had been presented for registration and that this transfer would be registered unless a court order to the contrary was obtained. The tenant then instituted proceedings and obtained an interim order to restrain the transfer from being registered and to keep their two caveats in force. The tenant obtained judgment against the owner in respect of the security deposit but the two banks resisted the tenant's application for either a declaration that a periodic tenancy binding on the two banks and containing a clause concerning the security deposit exactly identical to the previous lease, was created in favour of the tenant on the expiry of the lease with the owner, or in the alternative, a declaration that the tenant has an equitable lien over the leased premises ranking in priority to the interests of the two banks. At the trial, the tenant argued that in the same way that a purchaser of land has an equitable interest in the property, the tenant of leased premises who has paid a security deposit to the landlord has an equitable interest in the property.

**Held,** dismissing the plaintiffs' claim:

(1) The nature of the payment of a security deposit is entirely different from that of a payment of purchase money by a purchaser of land. The principles from the cases cited regarding purchase moneys were thus inapplicable.

(2) The obligation of the owner to repay the deposit money was a personal obligation and thus did not give rise to an equitable lien.

(3) Even if an equitable lien could arise, the failure to register this interest as a caveat before the registration of the mortgage by the two banks resulted in the mortgage obtaining priority.